

IT 06-11

Tax Type: Income Tax

Issue: Non-Filers (Income Tax)

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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<b>THE DEPARTMENT OF REVENUE</b>	)	Docket No.	05-IT-0000
<b>OF THE STATE OF ILLINOIS</b>	)	Tax ID No.	000-00-0000
v.	)	Tax Year	2002
<b>JOHN DOE,</b>	)	John E. White	
Taxpayer	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** John Doe appeared *pro se*; Sean Cullinan, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

**Synopsis:** This matter involves John Doe's (Doe or taxpayer) protest of a Notice of Deficiency (NOD) the Illinois Department of Revenue (Department) issued to him regarding tax year ending December 31, 2002. The Department issued the NOD after it determined that Doe had not filed an Illinois income tax return for that year, and that he was required to have done so.

The issue at hearing was whether taxpayer filed a return for 2002, and if not, whether penalties proposed pursuant to § 3-3 of the Uniform Penalty and Interest Act (UPIA) should be abated for reasonable cause. After considering the evidence offered at hearing, I recommend that the issues be resolved in the Department's favor.

**Findings of Fact:**

1. The Department issued an NOD to Doe on April 8, 2005. Department Ex. 1 (copy of NOD).
2. The Statement portion of the NOD notified Doe that the Department received information from the Internal Revenue Service that Doe had earned income as a

resident of Illinois in 2002, and that the Department had determined that Doe had not filed an Illinois income tax return as required by the Illinois Income Tax Act (IITA). Department Ex. 1, p. 2.

3. The NOD set forth the Department's determination that Doe's net income was \$21,536, that he owed Illinois income tax of \$646, and that he owed late-filing or non-filing penalties in the amount of \$263, plus interest. Department Ex. 1, p. 2.
4. The NOD further notified taxpayer that the penalties were being measured and proposed in two separate tiers, and it explained the separate bases for the different tiers. Department Ex. 1, p. 2. Specifically, the NOD provided, in pertinent part:

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We are imposing a late-filing or nonfiling penalty because you did not file a processable return by the due date (including any extended due date). This penalty is figured at the rate of 2 percent of the amount of tax required to be shown due on your return, after subtracting any payments made or credits allowed by the due date of the return. This penalty is imposed the day after the original due date of your return, including any extended due date.

An additional penalty is imposed if you file a return that we cannot process and you do not correct it within 30 days of the date we notify you; or you do not file a return within 30 days of the date we send you a notice of nonfiling. The additional penalty is equal to the greater of \$250 or 2 percent of the amount of tax shown due on your return, determined without regard to any payments made or credits allowed by the due date of your return, and cannot exceed \$5,000. This penalty will be assessed even if there is no tax liability due. (35 ILCS 735/3-3(a-10))

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Department Ex. 1, p. 2.

5. Doe protested the NOD, and asked for a hearing. Department Ex. 2 (copy of page 1 of taxpayer's completed protest form).
6. Following Doe's protest, the Department revised the amount of tax originally shown due on the NOD, after it determined that Doe should be given credit for an amount of

tax withheld from his wages by his employer(s) during 2002. Department Group Ex. 3 (copy of memo and schedule from Department's Technical Review section to Department counsel). The amount of credit for tax withheld amounted to \$681, leaving a net tax due of minus \$35, that is, a credit of \$35. *Id.* The Department did not change its prior determination that Doe owed a second tier non-filing penalty in the amount of \$250. *Id.*

7. Prior to issuing the NOD, the Department issued a Notice of Proposed Tax Due (NPTD) to Doe, at the same address to which it issued the NOD. Department Ex. 5 (copy of NPTD). That NPTD provided that Doe was required to respond in writing to the NPTD, and that, if Doe had not previously filed an Illinois income tax return, he must file such a return within 30 days of the date of the NPTD. *Id.* The NPTD further provided that if Doe did not file the return within 30 days, the Department would issue an NOD, which would include an additional penalty in an amount of at least \$250, for non-filing. *Id.*

### **Conclusions of Law:**

When the Department introduced the NOD it issued to taxpayer into evidence, it presented prima facie proof that Doe was liable for the tax and penalties proposed. 35 **ILCS** 735/3-3(f); 35 **ILCS** 5/904(a). The Department's prima facie case is a rebuttable presumption. Branson v. Department of Revenue, 68 Ill. 2d 247, 261, 659 N.E.2d 961, 968 (1995). A taxpayer cannot overcome the presumption merely by denying the accuracy of the Department's assessment, or merely by denying knowledge of a tax deficiency. Branson, 68 Ill. 2d at 267, 659 N.E.2d at 971; A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833, 527 N.E.2d 1048, 1053 (1st Dist. 1988). Instead, a taxpayer is obliged to present documentary evidence that is consistent, probable and closely identified with its books and records, to show that the proposed assessment is not correct. Fillichio v. Department of

Revenue, 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7 (1958); PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 33-34, 765 N.E.2d 34, 48-49 (1<sup>st</sup> Dist. 2002).

The first issue is whether taxpayer filed an Illinois return for 2002. The Department offered into evidence the NOD, in which the Department notified Doe that it determined that he had not filed a return for 2002. Doe offered no evidence sufficient to rebut the presumptive correctness of the Department's determination that Doe did not file a return regarding 2002, and that he was required to have done so. Department Ex. 1; 35 ILCS 5/904; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-97, 421 N.E.2d 236, 239 (1<sup>st</sup> Dist. 1981) (uncontroverted testimony that was not corroborated with documentary evidence was insufficient to show that taxpayer was entitled to claimed exemption).

The second issue is whether the second tier penalty should be abated for reasonable cause. Section 3-3 of the UPIA provides, in pertinent part:

§ 3-3. Penalty for failure to file or pay.

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a-10) This subsection (a-10) is applicable to returns due on and after January 1, 2001. A penalty equal to 2% of the tax required to be shown due on a return, up to a maximum amount of \$250, reduced by any tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed, shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard for any extension of time for filing. **However, if any return is not filed within 30 days after notice of nonfiling mailed by the Department to the last known address of the taxpayer contained in Department records, an additional penalty amount shall be imposed equal to the greater of \$250 or 2% of the tax shown on the return.** However, the additional penalty amount may not exceed \$5,000 and is determined without regard to any part of the tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed (penalty for late filing or nonfiling). If any unprocessable return is corrected and filed within 30 days after notice by the Department, the late filing or nonfiling penalty shall not apply. If a penalty for late filing or nonfiling is imposed in addition to a penalty for late payment, the total penalty due shall be the sum of the late filing penalty and the applicable late payment penalty. In the case of any type

of tax return required to be filed more frequently than annually, when the failure to file the tax return on or before the date prescribed for filing (including any extensions) is shown to be nonfraudulent and has not occurred in the 2 years immediately preceding the failure to file on the prescribed due date, the penalty imposed by Section 3-3(a-10) shall be abated.

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(i) If a taxpayer has a tax liability that is eligible for amnesty under the Tax Delinquency Amnesty Act and the taxpayer fails to satisfy the tax liability during the amnesty period provided for in that Act, then the penalty imposed by the Department under this Section shall be imposed in an amount that is 200% of the amount that would otherwise be imposed under this Section.

35 ILCS 735/3-3 (a-10), (i) (emphasis added).

The Department has promulgated a regulation in which it defined reasonable cause and described how it would administer the UPIA. 86 Ill. Admin. Code § 700.400. That regulation provides, “... whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill. Admin. Code § 700.400(b); *see also* PPG Industries, Inc., 328 Ill. App. 3d at 22-23, 765 N.E.2d at 40. The regulation further provides that, “[a] taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer’s experience, knowledge, and education. \*\*\*” 86 Ill. Admin. Code § 700.400(c).

Here, Doe offered no credible evidence to show that he made a good faith effort to determine and file and pay his proper tax liability in a timely manner. The evidence shows that, before the Department issued the NOD, it also issued the NPTD, which notified Doe that

the Department “had searched our files and could find no record of your Form IL-1040 ... for this tax year.” Department Ex. 5. It further notified Doe that if he did not respond to the NPTD within 30 days, the Department would issue an NOD and an additional non-filing penalty that is the one at issue here. The NPTD is addressed to Doe at the same address as the one to which the NOD was issued, and Doe received the NOD. Doe offered no competent or credible evidence to show that he acted reasonably by ignoring that NPTD.

**Conclusion:**

I recommend that the Director finalize the NOD as revised by the Department, pursuant to statute.

Date: 6/8/2006

John E. White  
Administrative Law Judge